

#### **38-2-4. Disposal of property by lienholder -- Procedure.**

(1) Any party holding a lien upon personal property as provided in this chapter may dispose of the property in the manner provided in Subsection (2).

(2) (a) The lienor shall give notice to the owner of the property, to the customer as indicated on the work order, and to all other persons claiming an interest in or lien on it, as disclosed by the records of the Motor Vehicle Division, lieutenant governor's office, or of corresponding agencies of any other state in which the property appears registered or an interest in or lien on it is evidenced if known by the lienor.

(b) The notice shall be sent by certified mail at least 30 days before the proposed or scheduled date of any sale and shall contain:

- (i) a description of the property and its location;
- (ii) the name and address of the owner of the property, the customer as indicated on the work order, and any person claiming an interest in or lien on the property;
- (iii) the name, address, and telephone number of the lienor;
- (iv) notice that the lienor claims a lien on the property for labor and services performed and interest and storage fees charged, if any, and the cash sum which, if paid to the lienor, would be sufficient to redeem the property from the lien claimed by the lienor;
- (v) notice that the lien claimed by the lienor is subject to enforcement under this section and that the property may be sold to satisfy the lien;
- (vi) the date, time, and location of any proposed or scheduled sale of the property and whether the sale is private or public, except that no property may be sold earlier than 45 days after completion of the repair work; and
- (vii) notice that the owner of the property has a right to recover possession of the property without instituting judicial proceedings by posting bond.

(3) If the owner of the property is unknown or his whereabouts cannot be determined, or if the owner or any person notified under Subsection (2) fails to acknowledge receipt of the notice, the lienor, at least 20 days before the proposed or scheduled date of sale of the property, shall publish the notice required by this section once in a newspaper circulated in the county where the vehicle is held.

(4) A lienor may have his property released from any lien claimed on it under this chapter by filing with the clerk of a justice court or district court a cash or surety bond, payable to the person claiming the lien, and conditioned for the payment of any judgment that may be recovered on the lien, with costs, interest, and storage fees.

(5) (a) The lienor has 60 days after receiving notice that the lienor has filed the bond provided in Subsection (4) to file suit to foreclose his lien.

(b) If the lienor fails to timely file an action, the clerk of the court shall release the bond.

(6) Property subject to lien enforcement under this section may be sold by the lienor at public or private sale; however, in the case of a private sale, every aspect of the sale, including the method, manner, time, place, and terms shall be commercially reasonable.

(7) This section may not be construed to affect an owner's right to redeem his property from the lien at any time prior to sale by paying the amount claimed by the lienor for work done, interest, and storage fees charged and any costs incurred by the

repair shop for using enforcement procedures under this section.

Amended by Chapter 198, 1996 General Session